

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Stephen DiFiore	Team: Squad #5	CCRB Case #: 202002611	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 04/07/2020 8:20 PM	Location of Incident: Outside 1305 Avenue R in Brooklyn	Precinct: 61	18 Mo. SOL 10/7/2021	EO SOL 5/4/2022	
Date/Time CV Reported Tue, 04/07/2020 9:01 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 04/07/2020 9:01 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Felix Chabanov	30733	953739	061 PCT
2. An officer			061 PCT
3. SGT Daniel McGuinness	05581	953086	061 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Fausto Moissantos	15637	967612	061 PCT
2. PO Cameron Wong	15998	967725	061 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Felix Chabanov	Force: Police Officer Felix Chabanov used physical force against § 87(2)(b)	
B.POM Felix Chabanov	Force: Police Officer Felix Chabanov used physical force against § 87(2)(b)	
C.POM Felix Chabanov	Discourtesy: Police Officer Felix Chabanov acted discourteously toward § 87(2)(b)	
D.POM Felix Chabanov	Discourtesy: Police Officer Felix Chabanov spoke discourteously to § 87(2)(b)	
E.POM Felix Chabanov	Off. Language: Police Officer Felix Chabanov made remarks to § 87(2)(b) based upon religion.	
F.POM Felix Chabanov	Abuse: Police Officer Felix Chabanov refused to provide his name to § 87(2)(b)	
G.SGT Daniel McGuinness	Discourtesy: Sergeant Daniel McGuinness spoke discourteously to individuals.	
H.POM Felix Chabanov	Abuse: Police Officer Felix Chabanov refused to provide his name to § 87(2)(b)	
I.POM Felix Chabanov	Force: Police Officer Felix Chabanov used physical force against § 87(2)(b)	
J.POM Felix Chabanov	Abuse: Police Officer Felix Chabanov threatened to arrest § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
K. An officer	Abuse: An officer refused to provide his name to § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

## Case Summary

On April 7, 2020, § 87(2)(b) filed this complaint on the CCRB call processing system.

On April 7, 2020, at approximately 8:20 p.m., § 87(2)(b) and other unidentified individuals were present for a religious gathering that took place outside the synagogue located at 1305 Avenue R in Brooklyn. The assorted men and boys were filling a variety of vessels, including a number of large plastic jugs, with ritually significant (or “holy”) water in preparation for the beginning of Passover. It was early in the COVID-19 pandemic, and a 911 caller reported that the men were holding a prohibited social gathering. Sergeant Daniel McGuinness and Police Officers Felix Chabanov, Fausto Moissantos, and Cameron Wong of the 61<sup>st</sup> Precinct responded to the location.

While instructing everyone to leave, PO Chabanov allegedly pushed § 87(2)(b) (**Allegation A: Force**, § 87(2)(g)). PO Chabanov also allegedly used physical force against § 87(2)(b) (**Allegation B: Force**, § 87(2)(g)). PO Chabanov kicked a pair of water jugs down the sidewalk (**Allegation C: Discourtesy**, § 87(2)(g)). PO Chabanov allegedly said, “Fuck Jews,” and referred to the religious gathering using the words, “Crap of Jews” (**Allegation D: Discourtesy**, § 87(2)(g); **Allegation E: Offensive Language**, § 87(2)(g)). PO Chabanov allegedly refused to provide his name to § 87(2)(b) (**Allegation F: Abuse of Authority**, § 87(2)(g)). Sgt. McGuinness told unidentified members of the group, “I see four fucking people here,” while instructing members of the crowd to spread out and socially distance (**Allegation G: Discourtesy**, § 87(2)(g)). PO Chabanov allegedly refused to provide his name to § 87(2)(b) (**Allegation H: Abuse of Authority**, § 87(2)(g)). PO Chabanov allegedly used physical force against § 87(2)(b) (**Allegations I: Force**, § 87(2)(g)). PO Chabanov threatened § 87(2)(b) with arrest (**Allegation J: Abuse of Authority**, § 87(2)(g)). An officer allegedly refused to provide his name to § 87(2)(b) (**Allegation K: Abuse of Authority**, § 87(2)(g)). The incident did not result in any arrests or summonses. § 87(4-b), § 87(2)(g)

The investigation obtained BWC footage for this incident from PO Chabanov, PO Moissantos, and PO Wong (Board Review 01-03, summarized at BR 20-21). All references to video evidence below refer to the timestamp in the video player and not to the videos’ on-screen timestamps. As noted throughout the report, the investigation was unable to determine if the available BWC captured the entire incident from beginning to end.

PO Chabanov has since been promoted to the rank of sergeant and reassigned to the 76<sup>th</sup> Precinct.

## Findings and Recommendations

### **Allegation (A) Force: Police Officer Felix Chabanov used physical force against § 87(2)(b).**

§ 87(2)(b) alleged that PO Chabanov instructed the men to leave, and he pushed § 87(2)(b) on his side as he turned away (Board Review 04). § 87(2)(b) did not have a detailed recollection of the incident, but he indicated that PO Chabanov pushed him before PO Chabanov first kicked a water jug down the sidewalk.

PO Chabanov’s BWC footage captures the first 30 seconds of his interaction with the members of the crowd, during which time he does not appear to shove, or otherwise use physical force against, any civilian on scene. He does appear to tap one of the men on the back as the man

begins to walk down the sidewalk (Board Review 01, at approximately 00:45). § 87(2)(b) is not the man whom PO Chabanov tapped. PO Chabanov's BWC was inadvertently deactivated shortly afterward. However, PO Wong's BWC footage provides a good view of PO Chabanov's actions after that point (Board Review 03, beginning at approximately 00:40), and it also does not show PO Chabanov appearing to use force against anyone, either before or after he began kicking the water jugs.

PO Chabanov denied that he shoved anyone during the incident (Board Review 05). He explained that, while telling civilians to leave the scene, he did place his hand flat on civilians' shoulders or backs and applied pressure to prompt them to move and to guide them where he wanted them to go. PO Wong did not see PO Chabanov push anyone (Board Review 06). PO Moissantos was not sure what PO Chabanov did because he was focused on the members of the crowd, but he denied ever seeing PO Chabanov physically interact with anyone (Board Review 07). Sgt. McGuinness was not sure if PO Chabanov pushed anyone (Board Review 08).

§ 87(2)(g)

**Allegation (B) Force: Police Officer Felix Chabanov used physical force against § 87(2)(b)**

§ 87(2)(b) claimed that PO Chabanov approached § 87(2)(b) who had a full bottle of holy water in his hand, punched him in the stomach, and grabbed the water from him (Board Review 09). § 87(2)(b) testified to seeing PO Chabanov shove someone when he took the water, though he could not recall if it was § 87(2)(b) or § 87(2)(b) (Board Review 10). However, § 87(2)(b) recounted that PO Chabanov merely pushed him very slightly while taking the water (Board Review 11). § 87(2)(b) did not suffer any injury.

As noted above, PO Chabanov denied that he pushed or shoved anyone in order to gain compliance and that the extent of his physical contact was placing a hand on someone's back or shoulder to guide them away from the scene.

The BWC footage shows that § 87(2)(b) was holding a hose and using it to fill a jug when PO Chabanov approached him and pulled the hose out of his grasp (Board Review 01 at 00:55; Board Review 02 at 00:48). PO Chabanov told him, "You're not taking anything. Let's go. Out." It is clear from the footage that PO Chabanov did not punch § 87(2)(b) and it also does not appear to show him pushing § 87(2)(b). It cannot be determined from the footage whether PO Chabanov made incidental physical contact with § 87(2)(b).

§ 87(2)(g)

**Allegation (C) Discourtesy: Police Officer Felix Chabanov acted discourteously toward § 87(2)(b)**

§ 87(2)(b) and § 87(2)(b) all recounted that PO Chabanov kicked at least one of the vessels with which they were retrieving the water. § 87(2)(b) added that he pleaded with PO Chabanov not to spill the water as it was essential to the celebration, and PO Chabanov responded by kicking several empty bottles. § 87(2)(b) noted that he went to retrieve one of the bottles PO Chabanov kicked, and PO Chabanov then knocked over another one. As § 87(2)(b) was leading the gathering, he is the

listed victim for this allegation.

PO Wong's BWC footage clearly captured PO Chabanov kicking two large plastic jugs during the incident (Board Review 03). At approximately 00:49, shortly after PO Chabanov takes the hose from § 87(2)(b) he kicks one jug hard enough to send it flying approximately ten feet down the sidewalk. § 87(2)(b) walks away to retrieve it. At 01:01, PO Chabanov kicks a second empty jug hard enough to send it flying into the street.

PO Chabanov, interviewed nearly eleven months since the incident, did not remember ever kicking any bottles down the sidewalk or otherwise knocking them over. After viewing the BWC footage described above, PO Chabanov claimed that he did not remember kicking the water jugs down the sidewalk, and he denied knowing why the jugs moved. He testified that he was unable to identify himself in the footage because it was too blurry for him to see clearly. PO Chabanov acknowledged that he did not recall there being any need during the incident to move the water jugs.

§ 87(2)(g)

Patrol Guide Procedure 200-02 requires officers to "render [their] services with civility and courtesy" (Board Review 12).

§ 87(2)(g)

**Allegation (D) Discourtesy: Police Officer Felix Chabanov spoke discourteously to § 87(2)(b)**

**Allegation (E) Offensive Language: Police Officer Felix Chabanov made remarks to § 87(2)(b) based upon religion.**

**Allegation (F) Abuse of Authority: Police Officer Felix Chabanov refused to provide his name to § 87(2)(b)**

All four civilians recounted hearing PO Chabanov use profanity and make remarks based on the religious beliefs of the congregation.

§ 87(2)(b) stated that the officers were initially calm when they first approached the scene during the ceremony. He further stated that officers were telling members of the congregation to spread out and that only one person at a time may receive the water. However, PO Chabanov said that no one may receive the holy water even after other officers said they could. He further stated that all of this took place before the PO Chabanov kicked the bottle of holy water. § 87(2)(b) further stated that when the rabbi tried to say that they are trying to practice a Jewish tradition, PO Chabanov responded with "Get out with this crap," and "Fuck Jewish people." PO Chabanov also told everyone to leave.

§ 87(2)(b) testified that PO Chabanov approached him shortly after he arrived on scene and removed the water from his hand. § 87(2)(b) testified similarly to § 87(2)(b) in that PO Chabanov said, "Fuck Jews," and referred to the water as "crap" when he tried to explain the purpose of the ceremony. § 87(2)(b) further testified that he asked PO Chabanov for his name around the time that PO Chabanov kicked the water bottles, but PO Chabanov ignored him. § 87(2)(b) was so embarrassed by PO Chabanov's actions that he left the scene and did not see anything that took place afterwards.

§ 87(2)(b) similarly testified to PO Chabanov's use of profanity and offensive

language. He stated that PO Chabanov took the water from § 87(2)(b) and then yelled, “Fuck Jews,” and said something about a “crap of Jews.”

§ 87(2)(b) who again cited that he did not have a good memory of the incident, also similarly stated that around the time PO Chabanov kicked the bottles, PO Chabanov yelled, “Fuck Jews,” and referred to the ceremony as a “crap of Jews” or as a “kind of crap.”

As previously noted, PO Chabanov's BWC footage captured the first 30 seconds of his interaction with the members of the crowd, but was then inadvertently deactivated at the moment he took the hose from § 87(2)(b). PO Moissasantos' BWC (Board Review 02, beginning at approximately 00:45) and PO Wong's BWC (Board Review 03, beginning at approximately 00:40) captured what took place after the deactivation of PO Chabanov's BWC. With specific regard to § 87(2)(b), the footage shows that he quickly walked away from the synagogue while PO Chabanov remained in front of it, so any of the alleged statements would have had to have taken place during the brief time period when they were both in front of the synagogue. The BWC does not capture PO Chabanov yelling, using profanity, or saying the word "Jews" during that time period. The footage also does not capture any of the civilians making any contemporaneous remarks about PO Chabanov having spoken offensively about their religion. However, many people are speaking throughout that time, and PO Chabanov is not immediately beside PO Moissasantos or PO Wong throughout, so it remains possible that PO Chabanov made a comment which was not captured in the BWC footage. None of the footage captures anyone asking for any officer's name.

PO Chabanov denied that he used profanity or made any remarks about the religious beliefs of the members of the congregation. He also volunteered during his CCRB interview that he is Jewish himself. PO Chabanov did not remember anyone asking him for his name.

PO Moisessantos, Sgt. McGuinness, and PO Wong denied hearing PO Chabanov ever use any profanity or make any comments about the religious beliefs of those gathered at the synagogue. PO Moisessantos did not remember anyone ask any officers for their names. PO Wong did not remember anyone asking PO Chabanov specifically for his name. Sgt. McGuinness did not hear anyone ask PO Chabanov for his name.

The investigation pleaded the discourteous and offensive language allegations with § 87(2)(b) as the victim because the rabbi was leading the congregation and because § 87(2)(b) and § 87(2)(b) all testified that the comments were made either directly to the rabbi or around the time that PO Chabanov removed the hose and kicked the bottles.

The available BWC footage does not capture PO Chabanov yelling the particular profane and offensive phrases at the specific times described by the civilians. § 87(2)(g)

§ 87(2)(g)

**Allegation (G) Discourtesy: Sergeant Daniel McGuinness spoke discourteously to individuals.**

None of the interviewed civilians recounted hearing Sgt. McGuinness use profanity during the incident.

PO Wong's BWC footage shows that, as the officers were ordering the civilians to spread out down the block, Sgt. McGuinness approached some of them and told them, "I see four fucking

people here” (Board review 03, at approximately 1:40).

§ 87(2)(g)

Sgt. McGuinness acknowledged that he made the profane remark. He initially testified that he did not know why he used profanity, and later explained that it was a frustrating situation because none of the civilians were listening to the officers.

Patrol Guide Procedure 200-02 requires officers to “render [their] services with civility and courtesy” (Board Review 12). DCT Case 2017-17005 holds that discourteous remarks are permissible in situations that are “so chaotic that the duty of courteousness and professional behavior should be overridden by the immediate need to maintain order.” The profanity itself must still be in furtherance of a “legitimate police purpose” (Board Review 13).

§ 87(2)(g)

**Allegation (H) Abuse of Authority: Police Officer Felix Chabanov refused to provide his name to § 87(2)(b)**

§ 87(2)(b) alleged that he asked PO Chabanov for his name at some point during the incident, and that PO Chabanov did not respond. § 87(2)(b) could not recall the timing of this interaction with any greater specificity. § 87(2)(b) and § 87(2)(b) did not testify to this allegation.

None of the BWC videos captured any civilian asking any officer for his name. It appeared that the officers were readying to leave when PO Moisessantos and PO Wong deactivated their BWCs, but the officers were still on scene at that point. The 911 log for this incident shows that it was not closed in the system until approximately 13 minutes after the end of the BWC footage (Board Review 14). It is not clear whether officers actually remained on scene for that extended period of time, or whether there was simply a delay in the 911 dispatcher marked the final disposition for the incident.

PO Chabanov did not remember anyone asking him for his name. PO Wong did not remember anyone asking PO Chabanov specifically for his name. PO Wong said that he deactivated his BWC because the incident was already over, and he was about to go back to his vehicle, though he could not remember if he did anything else first. Sgt. McGuinness did not hear anyone ask PO Chabanov for his name. PO Moisessantos did not remember anyone ask any officers for their names.

§ 87(2)(g)

**Allegation (I) Force: Police Officer Felix Chabanov used physical force against § 87(2)(b)**

§ 87(2)(b) testified that after officers told the crowd that only one person could receive the holy water, he went over to retrieve the holy water. Nonetheless, PO Chabanov ran over to him and pushed him hard in the chest to stop him from retrieving the water. § 87(2)(b)

refused to give him the water, so PO Chabanov punched § 87(2)(b) in the stomach. The push was hard enough that § 87(2)(b) could feel some pain when he lifted his arm for the next week or two.

As noted above, § 87(2)(b) said that PO Chabanov shoved § 87(2)(b) but then clarified that he was not sure if PO Chabanov shoved § 87(2)(b) or § 87(2)(b) § 87(2)(b) and § 87(2)(b) did not testify to this allegation.

PO Wong's BWC shows Sgt. McGuinness saying, "If you need the water, then all of you leave, and one person gets it" (Board Review 03, at approximately 00:38). At 01:46, Sgt. McGuinness approaches a few members of the group and says, "One person." At this point, almost all of the congregants begin to walk down the sidewalk toward the corner. There is one person holding a water jug who remains near PO Chabanov at the table. At 01:18, PO Wong turns away and walks toward the corner so there is no view of PO Chabanov. During this time in PO Moisessantos' BWC video, PO Moisessantos has walked in the opposite direction to tell someone else to leave. PO Wong's next view of PO Chabanov is at 01:35. No one is standing near the table and PO Chabanov is standing in between everybody and the crowd.

PO Moisessantos' BWC shows that only one person went to the table after Sgt. McGuinness reiterates, "One person" (Board Review 02, at approximately 02:27). PO Chabanov is around ten feet away from this individual and is backing up. No officer interacts with this individual until the end of both PO Moisessantos' and PO Wong's BWC videos.

PO Chabanov denied shoving or punching anyone, denied that anyone complained of pain to him, and affirmed that people were generally compliant as he guided them away from the scene. PO Wong denied that he ever saw PO Chabanov punch anyone in the stomach. As noted above, PO Moisessantos did not see PO Chabanov physically interact with anyone but noted that he was focused on the members of the crowd. Sgt. McGuinness similarly did not see PO Chabanov punch anyone in the stomach.

As noted above, there are only two instances captured on video where PO Chabanov appears to physically interact with members of the congregation: one where he briefly taps someone on the back, and one where he removes a hose from § 87(2)(b)'s hand. The footage does not capture him using force against anyone. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

#### **Allegation (J) Abuse of Authority: Police Officer Felix Chabanov threatened to arrest**

§ 87(2)(b)

§ 87(2)(b) testified that when he told the officers that they had done nothing wrong and asked why they had to leave, PO Chabanov said, "Because I said so. If you don't leave, we're going to arrest you."

PO Chabanov testified generally that he advised members of the crowd that they could be summonsed or arrested if they did not leave. He further testified that the members of the crowd could have been arrested for disorderly conduct for blocking the sidewalk, making excessive noise, and refusing to obey a lawful order to disperse.

Executive Order 202.10, issued March 23, 2020, states, "Non-essential gatherings of individuals of any size for any reason ... are canceled or postponed at this time." Executive Order 202.14, issued April 7, 2020, "continue[s] the suspensions and modifications of law, and any directives ... made by Executive Order 202 and each successor Executive Order to 202, for thirty days



until May 7, 2020” (Board Review 15-16).

§ 87(2)(g)

**Allegation (K) Abuse of Authority: An officer refused to provide his name to § 87(2)(b).**

§ 87(2)(b) alleged that he asked an officer for his name and the officer ignored him. He described the officer as skinny white man who was approximately 5’5” tall. § 87(2)(b) could not tell provide any further description, beyond that the officer was not PO Chabanov.

As noted above, the BWC videos do not capture anyone asking any officer for his name. Sgt. McGuinness is white, 5’10” tall, and weighs 215 pounds (Board Review 17). PO Moisessantos is Hispanic, 6’0” tall, and weighs 176 pounds (Board Review 18, page 2). PO Wong is Asian, 5’9” tall, and weighs 160 pounds (Board Review 19). None of them matches the description provided by § 87(2)(b).

PO Wong denied that anyone asked for his name and noted that he would have provided it if asked. PO Moisessantos did not remember anyone asking him for his name. Sgt. McGuinness did not see or hear anyone ask for an officer’s name.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been a party (Board Review 22).
- PO Felix Chabanov has been a member of the NYPD for nine years and has been a subject in six other CCRB complaints and 14 other allegations, one of which was substantiated:
  - 201905987 involved a substantiated allegation of physical force against PO Chabanov. The Board recommended Formalized Training and the NYPD imposed Formalized Training.
  - § 87(2)(g)
- Sgt. Daniel McGuinness has been a member of the NYPD for nine years and has been a subject in four other CCRB complaints and four other allegations, one of which was substantiated:
  - 201304546 involved a substantiated allegation of vehicle search against Sgt. McGuinness. The Board recommended Charges and the NYPD imposed Formalized Training.
  - § 87(2)(g)
  - § 87(2)(g)

**Mediation, Civil, and Criminal Histories**

- § 87(2)(b) did not opt to mediate this complaint.

- As of December 9, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (Board Review 23).

- § 87(2)(b) [Redacted]

- § 87(2)(b) [Redacted]

- § 87(2)(b) [Redacted]

- § 87(2)(b) [Redacted]

Squad: 5

Investigator: Stephen J. DiFiore Inv. Stephen DiFiore February 16, 2022  
Signature Print Title & Name Date

Squad Leader: Daniel Giansante IM Daniel Giansante February 17, 2022  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date